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In re Application of :
DAVIS *et al* :
Application No.: 10/522,515 :
PCT No.: PCT/US2003/024570 :
Filing Date: 06 August 2003 :
Priority Date: 07 August 2002 :
Attorney Docket No.: DOL08801 US :
For: AUDIO CHANNEL SPATIAL :
TRANSLATION :

DECISION

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed 15 December 2008, to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed Application Data Sheet.

The petition is hereby **DISMISSED** without prejudice.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with items (1) and (3) above.

With regard to item (1), the benefit claim to U.S. provisional application number 60/267,284 as indicated in the ADS is inconsistent with the benefit claim to application 60/267,284 made in international application number PCT/US02/03619. More specifically, although application PCT/US02/03619 contains a benefit claim to application 60/267,284, application PCT/US02/03619 does not contain any indication that it is a continuation of application 60/267,284.

MPEP 201.11, Section III. C., states in relevant part,

Sometimes a pending application is one of a series of applications wherein the pending application is not copending with the first filed application but is copending with an intermediate application entitled to the benefit of the filing date of the first application. . . . Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A. (Emphasis added.)

Because the reference to application 60/267,284 in the present ADS is not present in the intermediate application, the reference cannot be accepted at the present time.

Applicant is advised that although it is permissible to file a continuation, divisional, or continuation-in-part of a provisional application, doing so is not recommended because such a claim could potentially reduce patent term. See MPEP 201.11, Section III. B., Reference to Prior Provisional Applications.

Applicant is further advised that the ADS does not bear a signature as required in accordance with 37 CFR 1.33 and 10.18. Applicant is encouraged to use the most recent version of the ADS which includes a signature block. It can be obtained at: http://www.uspto.gov/ebc/portal/efs/sb0014_fill.pdf.

With regard to item (3), the petition fails to include the statement specified in 37 CFR 1.78(a)(6)(iii).

Before the petition under 37 CFR § 1.78(a)(3) and 1.78(a)(6) can be granted, either a revised ADS or an amendment (complying with 37 CFR 1.121) stating the proper relationship of the prior-filed international application to the provisional application is required. Applicant must also submit the required statement specified in 37 CFR 1.78(a)(6)(iii).

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Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web, by facsimile to (571) 273-0459, or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Any questions concerning this matter may be directed to James Thomson at (571) 272-3302.

Bryan Lin

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